XI-HC-

(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Criminal Appeal No.238 of 2004	
	APPELLANT: (In Jail)	Rajmal Yadav, Aged 31 years, S/o Late Sitaram Yadav, Occupation - Agriculturist, R/o Village Pendari, P.S. Rajpur, Distt. Surguja (C.G.)
	-Versus-	
	RESPONDENT:	State of Chhattisgarh
	Criminal Appeal No.123 of 2004	
	APPELLANTS:	1. Rameshwar Yadav, S/o Budha @ Budhan Mahto, Aged 29 years, Occupation Agriculturist, R/o Vill. Pendari, P.S. Rajpur, Distt. Surguja (C.G.)
		2. Sanjay Kumar Yadav, S/o Ramawatar Yadav, Aged 23 years, Occupation - Agriculturist, R/o Village Kotogahana, P.S. Rajpur, Dist. Surguja (C.G.)
	-Versus-	
	RESPONDENT:	State of Chhattisgarh

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

AND

Criminal Appeal No.167 of 2004

APPELLANT:
(In Jail)

Budha Mahto @ Budhau Mahto @ Anand Mahto, Aged 56 years, S/o Bhukhan Mahto, Occupation - Farmer, R/o Village Pendari, P.S. Rajpur, Distt. Surguja (C.G.)

-Versus-

RESPONDENT:

State of Chhattisgarh

(Criminal Appeals under Section 374 (2) of the Cr.P.C.)

Division Bench: -

Hon'ble Shri L.C. Bhadoo &

Hon'ble Shri Sunil Kumar Sinha, JJ.

22-8-2007:-

Shri Neeraj Mehta, counsel for the appellants.

Shri D.K. Gwalre, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais.*

L.C. BHADOO, J.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned counsel for the appellants submitted that the accused persons have filed repeat bail application, they are in detention for about 6 years, therefore, the appeals itself may be heard finally, to which Shri Gwalre has no objection. He further submitted that arising out of the same judgment & same incident two co-accused persons namely, Rameshwar Yadav & Sanjay Kumar Yadav were convicted for commission of offence under Section 323 of the IPC against which they have filed appeal, therefore, their appeal may also be heard and decided with these appeals, to which Shri Gwalre has no objection.

Accordingly, learned counsel for the parties heard.

The aforesaid appeals filed by the accused persons are being disposed of by this common judgment as all the three appeals are arising out of the same incident & same judgment passed by the learned Special Judge (Atrocities) Ambikapur in S.T. No.28/2002.

By these appeals, the accused/appellants have questioned legality & correctness of the judgment of conviction and order of sentence dated 28-1-2004 passed by the Special Judge, Ambikapur in S.T. No.28/2002 whereby learned Special Judge after holding accused/appellants Rajmal & Budha Mahto guilty for commission of offence under Section 302 of the IPC for committing the murder of Lurka, sentenced them to undergo imprisonment for life. Accused

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Budha Mahto has also been convicted under Section 294 of the IPC & sentenced to pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 15 days. Further, accused Rajmal, Rameshwar, Sanjay & Budha Mahto have been convicted for commission of offence under Section 323 of the IPC & each of the accused has been sentenced to undergo R.I. for 10 months. However, all the four accused persons have been acquitted of the charge under Section 3(1) (x) of the SC/ST Act. Accused Rajmal, Rameshwar & Sanjay have also been acquitted of the charge under Section 294 of the IPC. Accused Budha Mahto & Rajmal have also been acquitted of the charge under Section 3 (2)(v) of the SC/ST Act.

The case of the prosecution, in brief, is that on 20th August, 2001 cock and hen of Budha Mahto entered the paddy field of Bhadva. They were driven out by Bitni Bai (complainant). His wife Pancho and her daughter Bitni Bai asked Budha Mahto to keep his cock & hen under control, as they are spoiling their crop, on which Budha threatened them with dire consequences. On coming to know, Bhadva went to Budha Mahto to persuade him to keep his cock and hen under control, on which Budha started abusing him in the name of mother & father. At that time, Rajmal, son-in-law of Budha also came there and took him to the house of Budha. There they started beating him with lathi. When Bitni and Pancho Bai intervened, they raised cries.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Brother of Bhadva namely, Lurka came there & persuaded Rajmal & Budha not to beat his brother, on which Rajmal & Budha said that he should also be beaten. In the meantime, Rajmal & Budha called Rameshwar & Sanjay. They also came with lathi. All the four started beating Lurka with lathi. They assaulted on his head & other parts of the body, as a result of which he sustained injuries on the head. Thereafter, Rajmal, Sanjay and Rameshwar chased Bhadva, after catching hold of him they took him in the kitchen garden. They gave beating to him with lathi.

The matter was reported by Bitni Bai in the Police Station Rajpur under Exs.P/4 & P/5. The investigating officer left for scene of occurrence, after giving notice Ex.P/1 to the Panchas, prepared inquest Ex.P/2 on the body of the deceased. He also prepared site plan Ex.P/3. Site plan Ex.P/5 was prepared by Halka Patwari. In pursuance of the memorandum Ex.P/12 given by Budha Mahto the investigating officer seized wooden club under Ex.P/6. In pursuance of the memorandum Ex.P/13 given by Rajmal the I.O. seized Bamboo lathi under Ex.P/7. In pursuance of the memorandum Ex.P/15 given by Rameshwar the I.O. seized one Genda club under Ex.P/8. In pursuance of the memorandum Ex.P/14 given by Sanjay the I.O. seized one club under Ex.P/9. Blood stained soil & plain soil was seized from the place

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

of occurrence under Ex.P/10. One terricoat shirt of Bitni was seized under Ex.P/11.

Bhadva was sent for medical examination under Ex.P/23 to the Medical Officer, CHC, Rajpur where Dr. Pritam Ram (PW-9) examined his injuries. He prepared injury report Ex.P/16. He noticed one lacerated wound on the right parietal region, 5 contusions on other parts of the body. Bitni was also sent for medical examination to the Medical Officer, CHC, Rajpur under Ex.P/24 where Dr. Pritam Ram examined the injuries of Bitni. He prepared injury report Ex.P/17 in which he noticed multiple abrasions on right writ joint & complain of pain on back of neck. The injuries of Lurka were also examined by Dr. Pritam. He noticed that (i) there was swelling on right parietal region with abrasion (ii) there was swelling on left parietal region (iii) there was swelling on both sides of cheek (iv) there was swelling on left side of back (v) there was swelling on left palm. He opined that juries were caused by hard and blunt object. Nature of injuries was grievous. Patient was unconscious. He was referred to the District Hospital Ambikapur. He prepared the report Ex.P/19. The doctor examined weapon of offence sent to him. He prepared the report Ex.P/20. In the meantime, Lurka succumbed to the injuries. The dead body of the deceased was sent for postmortem examination to the Block Medical Officer, CHC, Rajpur under Ex.P/28 where Dr. Pritam

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

conducted the postmortem. He opined that cause of death was due to fracture of skull bone. Death was homicidal. He prepared postmortem report Ex.P/21.

After completion of the investigation, charge sheet was filed against the accused persons in the Court of Chief Judicial Magistrate, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur from where learned Special Judge received the case for trial. Learned Special Judge charged accused Rajmal & Budha for commission of offence under Section 3(1)(x) of the SC/ST Act, Sections 323 & 302/34 of the I.P.C. & Section 3(2)(v) of the SC/ST Act. The accused persons denied the charges. Learned Special Judge charged accused Budha, Rameshwar and Sanjay for commission of offence under Section 3(1)(x) of the SC/ST Act read with Section 294 of the I.P.C. and Section 323 of the IPC.

The prosecution in order to establish the charge against the accused persons examined 13 witnesses. Statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence, stated that they are innocent and have been falsely implicated in the crime.

Learned Special Judge vide impugned judgment convicted and sentenced the accused persons as aforesaid.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	At the outset, learned counsel for the accused/appellants has not disputed homicidal death of Lurka. Moreover, PW-2 Bhadva, injured eyewitness, PW-3 Bitni Bai and PW-4 Faguna have stated that accused Rajmal & Budha attacked Lurka with lathi, as a result of which he sustained head injury & other injuries. The above ocular evidence is corroborated by the medical evidence of PW-9 Dr. Pritam, who in the first instance examined injuries of the deceased, after his death he conducted postmortem on his body on 22-8-2001. He has stated that there was fracture of skull and parietal bones. Parietal bone was depressed and fractured. There was haematoma in the skull. Clotted blood was present. Cerebral membrane was also broken. On opening of the skull, he found that skull bone was fractured. Membrane was ruptured. Brain was congested. Lungs, wind pipe and perion were congested. Liver was congested. Kidney was congested. Cause of death was shock as a result of fracture of skull bone. Death was homicidal in nature. His report is Ex.P/21. In view of the above ocular and medical evidence, it is established that death of the deceased was homicidal in nature. As far as injuries sustained by Bhadva is concerned, PW-2 Bhadva has stated that all the accused persons attacked him with lathis. In the first instance Rajmal & Budha attacked him with lathi. On hearing his cries, his brother Lurka came. His wife and daughter	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

also intervened. The accused persons attacked Lurka also. Thereafter, accused persons Rajmal, Sanjay and Rameshwar dragged him towards kitchen garden. There all the 3 attacked him with lathi. The above evidence of Bhadva is corroborated by the evidence of PW-3 Bitni Bai as also evidence of PW-4 Faguna. This ocular evidence is corroborated by the medical evidence of PW-9 Dr. Pritam. He has stated that on 21-8-2001 he examined injuries of Bhadva. As many as 7 injuries were found on his body, out of which there was a lacerated wound on right parietal region & 5 contusions were there on various parts viz. elbow of right hand, palm of right hand, right thigh, right side of back, left side of chest. He has stated that all the injuries were inflicted by hard and blunt object. Ocular evidence of the above witnesses regarding attack made by the accused persons with lathi on Bhadva is corroborated by the medical evidence of Dr. Pritam. Injury report Ex.P/16 has been proved by him.

Now coming to the complicity of accused persons namely, Rajmal & Budha in attacking Lurka as also simple injuries inflicted to Bhadva by Rajmal, Rameshwar and Sanjay, PW-2 Bhadva has categorically stated that on the fateful day when he came to know about the fact that cock and hen of Budha had damaged his standing crop, he went to the house of Budha to persuade him that he should keep cock and hen under control so that they should not damage his crop which enraged

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Budha & he started abusing. In the mean time, accused Rajmal, son-in-law of Budha came on the scene, both of them started beating Bhadva with lathis. Hearing his cries, Bitni, daughter of Bhadva and his wife came on the scene, when they tried to intervene, they gave beating to them also. In the meantime, his brother Lurka also came on the scene, seeing him accused Rajmal & Budha attacked him saying that he should also be taught lesson. They gave beating to Lurka with lathi. All the injuries were inflicted on the head which proved fatal. Skull bone & parietal bone were fractured which has been proved and established by the medical evidence of PW-9 Dr. Pritam, who examined injuries. All these injuries have been found in the injury report Ex.P/16. This witness has further stated that thereafter Sanjay and Rameshwar came on the scene carrying lathi. When he tried to escape, Rajmal, Sanjay and Rameshwar dragged him towards the kitchen garden of Budha & attacked him with lathi. The evidence of this witness is corroborated by the evidence of PW-3 Bitni Bai as also PW-4 Faguna. They have stated in clear terms that in the first instance Rajmal & Budha attacked Bhadva with lathi. When they tried to intervene and raised cries, in the meantime, Lurka came on the scene to whom also Rajmal & Budha attacked with lathi, as a result of which he sustained injuries on head & other parts of the body.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

We have scrutinized evidence of these eyewitnesses and medical evidence. In cross-examination of these witnesses, defence has not been able to elicit any circumstance which discredit evidence of these witnesses. The presence of Bhadva on the scene of occurrence is further established by the injury report Ex.P/16 & injuries sustained by him in the quarrel, that has been proved by Dr. Pritam. Even Bitni also sustained multiple abrasions which is evident from her injury report Ex.P/17. Therefore, their presence on the scene of occurrence cannot be doubted. From the above ocular and medical evidence, it is established that accused Rajmal & Budha attacked the deceased as a result of which he sustained injuries on head. Skull bone & parietal bone were fractured that proved fatal & he died on account of that as per the medical evidence of PW-9 Dr. Pritam. It is also established that accused Rameshwar, Sanjay, Budha and Rajmal attacked Bhadva with lathi & inflicted simple injuries.

As far as conviction of accused Budha under Section 294 IPC is concerned, Bhadva has stated that when he went to persuade Budha not to leave loose cock and hen, as they are damaging his crop, he abused him in the name of mother and sister. Therefore, offence under Section 294 of the I.P.C. is also established against accused Budha.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned counsel for accused/appellants Rajmal & Budha argued that it is established from the prosecution evidence that quarrel started on a petty matter that cock & hen of Budha damaged standing paddy crop of Bhadva, when Bhadva protested, quarrel started in a heat of passion in which the deceased came on the scene & he tried to intervene, in that process, in a heat of passion, all of a sudden, accused Rajmal & Budha attacked with lathi. There was no intention, no preparation or pre-meditation of the accused persons to cause death of the deceased. There was no previous enmity. Everything happened on the spur of moment, in a heat of passion, without any preparation or pre-meditation, therefore, case of accused Rajmal & Budha falls under Exception IV to Section 300 of the I.P.C., hence, offence against them does not travel beyond Section 304 Part-II of the I.P.C. He further argued that as far as sentence impose upon accused Rameshwar & Sanjay is concerned, they are not persons of criminal nature, this was the first offence of the accused persons, they ought to have been let off under the sentence already undergone by them.

On the other hand, learned counsel for the State supported the judgment of the trial Court.

Having heard learned counsel for the parties, having perused evidence available on record, we are of the considered opinion that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

argument advanced by learned counsel for the accused/appellants is not without merit. It is admitted position that the accused persons as well as deceased party are poor villagers. The dispute started on petty matter when cock and hen of accused Budha entered the paddy field of Bhadva & damaged crop, cock & hen were driven out by wife and daughter of Bhadva, when Bhadva went to persuade Budha to keep his cock & hen under control so that they should not damage the crop, in that process, some altercation took place, during that altercation, Rajmal appeared on the scene and attacked Bhadva. Hearing his cries, brother of Bhadva, Lurka appeared on the scene in order to intervene, accused persons Rajmal & Budha attacked Lurka, out of those assaults, lathi blow fell on the head of the deceased which proved fatal, skull bone was fractured & next day he died. Everything happened on spur of moment, in a heat of passion, without any preparation or pre-meditation, therefore, case of accused Rajmal & Budha falls under Exception IV to Section 300 of the I.P.C. Therefore, offence against these two accused persons does not travel beyond Section 304 Part II of the I.P.C. Looking to the facts and circumstances of the case, we are of the considered opinion that if accused Rajmal & Budha are sentenced to undergo R.I. for 7 years, that will meet ends of the justice.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

As far as sentence imposed upon accused Rameshwar and Sanjay under Section 323 of the I.P.C. is concerned, there is no ing on record to show that these two accused persons are of criminal nature. It is their first offence. As per the judgment of the trial Court, they have already undergone 1 month 18 days sentence. If they are let off under the sentence already undergone by them, that will meet ends of justice. However, sentence imposed upon accused Budha under Section 294 of the I.P.C. does not require any interference by this Court.

In the result:

1. The appeals filed by accused/appellants Rajmal & Budha are partly allowed. Conviction and sentence imposed upon accused Rajmal & Budha under Section 302 of the I.P.C. are set aside, instead thereof they are convicted under Section 304 P rt-II of the IPC & sentenced to undergo R.I. for 7 years.

2. Conviction and sentence imposed upon accused Rajmal & Budha under Section 323 of the IPC are maintained. However, substantive sentence imposed upon them under Section 323 of the IPC shall run concurrently.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
Barve	3. Sentence imposed upon accused Budha under Section 294 of the IPC is maintained. 4. Appeal of accused/appellants Rameshwar and Sanjay is also partly allowed while maintaining their conviction under Section 323 of the IPC. 10 months' sentence imposed upon each of the accused/appellants is reduced to already undergone i.e. 1 month 18 days. Sd/- L.C.BHADOO Judge Sd/- Sunil Kumar Sinha Judge	